



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO Succession Cause 81 of 2009

1. Family Law
2. Subject of main Petition
 - i) The Law of Succession Cap 160 Laws of Kenya.
 - ii) Grant limited for Special purpose.
 - iii) Deceased male adult
 - a) Aged 52 years old on 23rd October, 2007.
 - b) Cause of death Pneumonia.
 - iv) Died testate and named two executors
 - v) Error in filing grant of Probate intestate instead of testate grant
(P&A Succession No. 96/08).
 - vi) Delay caused due to this error for two years.
3. Application to be granted. Grant limited for special purpose dated 12th October, 2009.
 - i) **Reasons**
 - a) The children of the deceased are in education institutions and require school fees urgently.
 - b) Widow unemployed.
4. **Held**
 - i) Urgent funds for School and education fees be released amounting to Kshs. 301,430/=.
 - ii) Applicants to urgently apply for grant of Probate Testate.
5. **Case Law** - Nil
6. **Advocate**
J.R. Kimeto advocate instructed by M/S Bett & Co. advocates
for the Petitioners/Applicants - present

KIMELI BETT TUEI alias KIMELI BETT ARAP TUEIDECEASED
AND
CHRISTINE CHEPKOECH TUEI PETITIONER

RULING

I: Background

1. Kimeli Bett Tuei alias Kimeli Bett Arap Tuei, (*deceased*) a male adult aged 52 years old as of 23rd October, 2007, passed away leaving his estate Testate. He prepared Will for his death and wrote a Will naming two executors.
2. Due to the errors of the registry, the Deputy Registrar and to some extent the advocate on record, the application for grant of letters was filed for under Intestate instead of Testate. This caused quite a considerable amount of delay in this matter spanning to a period of almost two years. The cause 96/08 most certainly requires to begin a fresh.
3. In the meantime, the widow to the deceased is unemployed. She has school going children who require school fees to be paid to the various institutions of learning.

4. The applicants filed in this file No. 81/09 for a Special Limited Grant to be issued to them pending the finalization of the application for letters of a grant Testate.

II: Application 12th October, 2009

5. The Hon. the Chief Justice (*Chunga CJ*) (*as he then was*) provided for a special form to be filed for such situation where school fees was required.
6. This was form P&A 85 as read with form P&A 19. That prays for a petition for Special Grant under 5th Schedule Para. 18 and supported by an affidavit.
7. Namely that before the grants is finalized, the applicant be provided with access to the finances of the deceased to pay urgent needs and or debts of the estate.
8. The applicant herein has outlined her immediate need is a sum of Kshs. 570,937/= out of this, the children of the deceased are to be paid the following funds to the institutions.

| <u>NAME</u> | <u>INSTITUTIONS</u> | <u>AMOUNT</u> |
|-------------------------------------------|-------------------------------------------|--------------------------------------------------------------------------|
| Geoffrey Kiprono Melly (Born 8.10.88) | Jomo Kenyatta University of Technology | a) Kshs. 73,237/= balance of fees b) Kshs. 19,500/= hostel fees |
| Collins Kipkirui Melly (Born 17.12.91) | Cheptenye High School | Kshs. 28,793/= |
| Ivy Chepchirchir Tuei (Born 14.8.94) | Moi Forces Academy Lanet | Kshs. 48,200/= |
| Purity Chepkorir Tuei (Born 24.3.2005) | Kericho Primary School | Kshs. 31,700/= |

9. The above sums are supported by annexures from the institution.

10. The applicants prays for anticipated fees for 1st term in 2010 and subsistence allowance of Kshs. 100,000/=

III: Findings

11. This court is of the opinion that the fees as outlined above be paid. It further orders that fees for 2010 should be applied for in due course.

12. That a sum of Kshs. 100,000/= for subsistence allowance and upkeep is hereby granted for the children.

13. I hereby grant the total of Kshs. 201,430 to be paid to the institution as follows:

Jomo Kenyatta University of Technology - Kshs. 73, 237/= for fees

- Kshs. 19,500/= for the hostels

Cheptenye High School - Kshs. 28,793/=

Moi Forces Academy - Kshs. 48,200/=

14.I further order that Kshs. 100,000/= be paid to the two executors for the upkeep of the children. The Gross total being Kshs. 301,430/=.

IV: Bank Account

15.I have before me the bank account of the deceased. I have been shown through a further affidavit the sums in the account. I order that the account at Barclays Bank Nkurumah Branch, Mombasa (*High rate saving account*) pay the sum of Kshs. 301,430/= to the various named institutions. That this sum is exclusive of the bank charges which will be charged to the deceased estate.

16.The applicants are to move with haste and apply for grant of letters of Probate Testate.

17.Costs to the estate.

DATED this 5th day of November, 2009 at KERICHO

M.A. ANG'AWA

JUDGE

Advocate

J.R. Kimeto advocate instructed by M/S Bett & Co. advocates
for the Petitioners/Applicants - present